

**EXECUTIVE SECRETARIAT**  
**ROUTING SLIP**

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
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6	DDA				
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/OLL				
14	D/PAO				
15	D/PERS				
16	VC/NIC				
17	NIO/NARC	X			
18	C/S		X		
19	ES		X		
20	NIO/ECON		X		
21					
22					

**IMMEDIATE**

Form 160c  
3-65 (13)

SUSPENSE \_\_\_\_\_  
Date \_\_\_\_\_

Remarks To 17: Material for Today's DPC (Yours is second Agenda Item)

Executive Secretary  
30 Jul 86

Date

**THE WHITE HOUSE**  
**WASHINGTON**

3433X

## CABINET AFFAIRS STAFFING MEMORANDUM

**Date:** 7/28/86 **Number:** 317,162 **Due By:** ----

**Subject:** Domestic Policy Council Meeting - July 30

2:00 P.M. Roosevelt Room

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	<input type="checkbox"/>	<input type="checkbox"/>	CEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEQ	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HHS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Svahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Chew (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Education	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
EPA	<input type="checkbox"/>	<input type="checkbox"/>	Executive Secretary for:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
GSA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DPC	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NASA	<input type="checkbox"/>	<input type="checkbox"/>	EPC	<input type="checkbox"/>	<input type="checkbox"/>
OPM	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS:**

The Domestic Policy Council will meet on Wednesday, July 30, 1986 at 2:00 P.M. in the Roosevelt Room.

The agenda and a background paper on the Quiet Title Act is attached.

**RETURN TO:**

☒ Alfred H. Kingon  
Cabinet Secretary  
456-2823  
(Ground Floor, West Wing)

☐ Don Clarey  
☐ Rick Davis  
☐ Ed Stucky

Associate Director  
Office of Cabinet Affairs  
456-2800 (Room 235, OE08)

**THE WHITE HOUSE  
WASHINGTON**

**CABINET AFFAIRS STAFFING MEMORANDUM**

**Date:** 7/29/86 **Number:** 317,164 **Due By:** -----

**Subject:** Domestic Policy Council Meeting - July 30

2:00 P.M. Roosevelt Room

	Action	FYI		Action	FYI
<b>ALL CABINET MEMBERS</b>	<input type="checkbox"/>	<input type="checkbox"/>	<b>CEA</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>CEQ</b>	<input type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>OSTP</b>	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Poindexter</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Svahn</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HHS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Chew (For WH Staffing)</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
<b>CA</b>	<input type="checkbox"/>	<input type="checkbox"/>			
UN	<input type="checkbox"/>	<input type="checkbox"/>	<b>Executive Secretary for:</b>		
USTR	<input type="checkbox"/>	<input type="checkbox"/>	<b>DPC</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EPA	<input type="checkbox"/>	<input type="checkbox"/>	<b>EPC</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GSA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
NASA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OPM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS:**

The Domestic Policy Council will meet on Wednesday, July 30, 1986 at 2:00 P.M. in the Roosevelt Room.

The background paper on Drug Abuse Policy is attached for your review.

**RETURN TO:**

☒ **Alfred H. Kingon**  
Cabinet Secretary  
456-2823  
(Ground Floor, West Wing)

☐ **Don Clarey**  
☐ **Rick Davis**  
☐ **Ed Stucky**

**Associate Director**  
**Office of Cabinet Affairs**  
**456-2800 (Room 235, OEOB)**

THE WHITE HOUSE

WASHINGTON

July 28, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: RALPH C. BLEDSOE *Ralph Bledsoe*  
Executive Secretary

SUBJECT: Domestic Policy Council Meeting of July 30, 1986

Attached are an agenda and materials for the Domestic Policy Council meeting scheduled for Wednesday, July 30, at 2:00 p.m. in the Roosevelt Room. Two issues will be discussed: Quiet Title and Drug Abuse Policy.

The first agenda item will include a discussion of the Quiet Title Act, which bars land claims against the United States 12 years after the claim accrued. Two bills have been introduced in Congress to amend the Act, and to exempt states from the 12-year statute of limitations applicable in quiet title actions against the United States. A subcommittee of the Domestic Policy Council's Energy, Natural Resources and Environment Working Group prepared the attached paper, outlining the various positions that might be taken on the proposed amendments.

The second agenda item will include a continuation of previous meetings on the new drug abuse policy directions being taken by the Administration. Specifically, cost analyses and legislation will be discussed. No further papers are being distributed, but information will be given out at the meeting.

THE WHITE HOUSE

WASHINGTON

DOMESTIC POLICY COUNCIL

Wednesday, July 30, 1986

2:00 p.m.

Roosevelt Room

AGENDA

1. Quiet Title                   -- F. Henry Habicht II  
Assistant Attorney General, Land  
and Natural Resources Division  
Department of Justice
  
2. Drug Abuse Policy       -- Carlton Turner  
Deputy Assistant to the President  
for Drug Abuse Policy  
Office of Policy Development



U.S. Department of Justice

Land and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 22, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: F. Henry Habicht *F. H. Habicht*  
Chairman  
Quiet Title Act Subcommittee  
Energy and Environment Working Group

ISSUE: Should the Administration support pending legislation which would exempt the states from the 12-year statute of limitations in the Quiet Title Act, which Act bars land claims against the United States 12 years after the claim accrued?

BACKGROUND

In 1972, Congress passed the Quiet Title Act, 28 U.S.C. § 2409a. This Act provided for the first time a limited 12-year waiver of sovereign immunity with respect to suits against the United States involving title to land. Section 2409a(f) provides that the 12-year statute of limitations shall begin to run against the party claiming land at such times as "the plaintiff or his predecessor in interest knew or should have known of the claim of the United States."

Two bills have been introduced in Congress -- S. 1617 and H.R. 2484 -- which would amend the Quiet Title Act and which would exempt the states from the 12-year statute of limitations applicable to quiet title actions against the United States. The Senate Subcommittee on Public Lands of the Committee on Energy and Natural Resources held a hearing on March 4, 1986 on S. 1617. The House Subcommittee on Administrative Law of the Committee on the Judiciary held a hearing on March 5, 1986 on H.R. 2484. The Department of Justice testified at both hearings. The House Administrative Law Subcommittee has scheduled a markup on quiet title for August 14, 1986.

The bills would legislatively overrule the Supreme Court's decision in Block v. North Dakota, 461 U.S. 276 (1983), which held that the 12-year statute of limitations is fully applicable to a state. The bills would allow a state to commence a quiet title action against the United States at any time, regardless of when the cause of action accrued.

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The position taken by the Administration at the hearings was that the bills as drafted should not be enacted. The rationale for this position is that the bills' application is too broad -- they open up the United States to any kind of potential quiet title action by a state, no matter how longstanding or open the claim of the United States has been. Quiet title actions are costly, time consuming and resource-intensive -- often involving situations where records are lost, destroyed or difficult to locate. It was the Administration's view, as reflected in its testimony, that public resources should be committed to additional and new litigation only where clearly necessary.

### DISCUSSION

The issue presented for resolution is in one sense an arcane legal one but has important and relatively straightforward federalism dimensions. A waiver of the Quiet Title Act statute of limitations does not result in the granting of any lands to the states; it would simply give states the opportunity to prove in federal court that the federal government is holding lands which have always belonged to the states.

In past months, we have analyzed this issue at some length because our colleagues in the Western states have raised this as a problem and because we are committed to communication and a close relationship with the states. The issue is an extremely important one to state/federal relations. Cooperative federalism dictates that if there are lands which the states truly believe are theirs, the Federal Government should not assert a procedural bar to prevent the states from determining title to the land and being able to manage that land according to their priorities. However, the Federal Government needs certainty and stability with respect to its ownership rights in property so that it can effectively carry out its myriad land management responsibilities. In addition is the Federal Government's legitimate concern over the resource costs involved if the statute is waived and a flood of litigation ensues. Therefore, in our discussions with the states, we have focused on ways of resolving the states' key concerns without subjecting the federal treasury to unlimited potential claims and lawsuits.

The symbolism of the issue to state attorneys general may be more significant than the substance. We have not been able to obtain reliable quantitative information from the state attorneys general on the number of suits that are likely to arise if the statute is waived.\* In fact, when pressed, the state attorneys

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\*/ In the absence of a waiver of the statute of limitations, the Attorney General of Idaho has testified that his office is preparing three cases, including one involving the question of ownership of the southern portion of the bed of Lake Coeur d'Alene, so that Idaho does not encounter a future bar by the 12-year limitations period.

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general have identified only a few cases they intend to bring if the statute is waived. Nonetheless the "symbolism" of being forthcoming regarding state sovereign land issues, even if it is only that, is important for this Administration. Moreover, there is substantive importance to ensuring that the federal government holds only that land to which it has appropriate title.

It should be pointed out that there are existing administrative mechanisms to quiet title such as Section 315 of the Federal Land Management Act. Further, legislative remedies are available which Congress does not hesitate to pursue when confronted with sufficient political support.

Because of the importance of this issue to the states, we have pressed on in our negotiations with them. It became clear in the course of these discussions that some lands were more important to states than others.

In particular, submerged lands, such as rivers and lakes, which passed to the states upon statehood under the equal footing doctrine or passed to the states in 1953 under the Submerged Lands Act, have emerged as the lands of most concern to the states. Title disputes often arise over these lands because no boundary delineations were drawn for them and, because of their changeable nature, original boundaries may have shifted significantly over the years.

Another type of lands of importance to the states, but of somewhat less importance than submerged lands, are uplands. "Uplands" in this context simply means all lands other than submerged lands. These lands include school lands, such as those for universities, swamp and overflowed lands and certain other lands.

#### OPTIONS

After extensive meetings over the last four months with the Domestic Policy Council (DPC) Energy and Environment Working Group, several options for courses of action have emerged. Those options (with specific language attached) are as follows:

Option 1 - a waiver of the statute of limitations for all lands (submerged lands and uplands) with at least the the following protections deemed necessary by all agencies: (a) an exemption for defense facilities as long as the lands are being used for that purpose; (b) an exemption for lands on which the United States has made substantial improvements; (c) protection for certain third parties, such as lessees, which would permit them to finish their lease terms; (d) a requirement for pre-litigation

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administrative consultation by the states with the United States; (e) a provision barring suit over certain lands which the Secretary of the Interior determined were ineligible for state selection; and (f) clarification that waiving the statute of limitations for purposes of quieting title in no way affects the Tucker Act's 6-year statute of limitations for bringing damage claims against the United States;

- this option extends the waiver to all lands and includes protections and conditions deemed absolutely necessary by the agencies.

Option 2 - a waiver of the statute of limitations for submerged lands only and a description of what constitutes adequate notification for purposes of accrual of other actions by states where the 12-year statute of limitations remains applicable. This option also includes a provision barring any state actions against defense facilities as long as the lands are being used by the United States for that purpose and a requirement for pre-litigation administrative consultation by the states with the United States.

- although less comprehensive, this option addresses the primary concern of the states-- submerged lands. This option has fewer protections and conditions because the agencies have not identified the same exposure concerns with submerged lands as they have with uplands and because the acreage involved with this option is approximately 1/10 of that involved with Option 1. Because it involves their key concern and because it contains fewer protections, this option is more likely to be acceptable to the states.

Option 3 - no action.

### Costs

As noted on page 2 of this memorandum, concern over the costs of waiving the statute of limitations was the driving force behind the Administration's opposition to the bills presently pending before Congress which entirely waive the statute of limitations for states. Further, during our working group discussions, some agencies have expressed concern about the potential costs involved with more limited waivers of the statute of limitations. It is important to try and address these concerns.

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When considering the question of costs, several general propositions should be remembered. First, by waiving the statute of limitations, the federal government will not be granting or giving away land to the states -- we only will be giving the states the right to sue to obtain title to land which they believe has always been theirs. To prevail, they must carry the burden of proof that their claim of title is superior. The costs of such litigation will provide some incentive for states not to bring non-meritorious suits. Second, any truly frivolous lawsuits brought by the states can be dealt with by summary motion. Third, by requiring a "cooling off" period of pre-litigation administrative consultation by the states with the agencies in charge of the disputed land, the number of lawsuits should be reduced.

In trying to assess the actual costs of either Option 1 or Option 2, it is not possible to estimate with any certainty how many suits would actually be filed under either option. However, we do know from past experience that very few quiet title suits have ever been brought by the states, and the absence of many active disputes now indicates that few claims exist on which states are likely to succeed in court. Furthermore, it is possible that eliminating the statute of limitations may result in the states not filing protective quiet title suits, but instead filing suits only when the need becomes clear. Nevertheless, if a change is made to the statute of limitations, we should assume that some states will try to take advantage of the change.

Certain costs or losses, in addition to actual litigation expenses, can be expected if the federal government is sued in a quiet title action. Those costs or losses include loss of revenues for lost rents and royalties, costs for repurchasing property, and damages for loss of use of property. However, it should be remembered that these types of costs or losses would have to be paid only if the federal government loses the quiet title suit, which is not likely to happen frequently.

These costs or losses are extremely difficult to estimate since they will depend on the facts of each case. In addition, such costs or losses will be mitigated by some of the limitations contained in the options, e.g., that the cost of repurchasing property from the state if the state gains title in a quiet title action will not include the value of improvements made by the United States, and the Tucker Act limits damages that a state can claim against the United States for its use of the land to no more than six years before the suit is brought.

### Agency Positions

The positions the agencies have taken reflect the difficulty of weighing federalism benefits against speculative resource costs. Following is a list of the options the agencies support and the rationale therefor:

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1. Interior Department - supports Option 1. Based on federalism concerns, Secretary Hodel has expressed a strong preference for waiving the statute of limitations to the maximum extent possible as long as the protections in Option 1 are included. Interior believes the federal government should not resist reasonable means for states to establish the scope of their sovereign land holdings.

2. Agriculture Department (Forest Service) - Supports Option 2. The reason for support of Option 2 is strong concern over the workload which might result if a waiver were granted for uplands; fear that the states might bring suit over uplands for purely political reasons; and concern over the uncertainty which might result for land managing agencies if title to uplands was subject to potential litigation.

3. Defense Department (represented by the Navy) and Energy Department - Support either Option 1 or 2 as long as lands used for defense purposes are protected. Defense has a slight preference for Option 2 since fewer lands would be involved. Energy is also concerned that power transmission lines which cross submerged lands and power transmission towers which are built in submerged lands be protected if Option 2 is chosen.

4. Office of Management and Budget - Supports Option 3. OMB's choice is based on its concern over the potential costs involved with waiving the statute of limitations.

5. Federalism Working Group - Supports Option 1 based on the belief that cooperative federalism dictates that if there are lands which the states truly believe are theirs, the federal government should not assert a procedural bar to prevent the states from determining title to the land.

#### THE PROCESS

As soon as the DPC decides which quiet title position to adopt, the following process will ensue. Representatives of the Department of Justice and any other interested agencies will meet with and present the compromise position to the states. Any agreement reached with the states will be submitted for interagency and DPC approval and incorporated into a joint state Administration bill. If the states do not agree with the compromise position, additional DPC Energy and Environment Working Group meetings will be held to discuss areas of disagreement.

An integral part of our agreement with the states will be that both the states and the federal government must agree to support all aspects of the compromise during congressional consideration of it, and that both sides will resist any attempts by Congress to change the compromise. It will be made clear to the states that should Congress amend the compromise in a way which undermines the

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federal government interests, we will withdraw our support for the compromise. Because this is an issue of importance to only a small percentage of the Members of Congress, a Presidential veto is unlikely to be overridden.

Following is a list of the options. Pros and cons for each option are included as well.

OPTION I: SUPPORT WAIVER OF 12-YEAR LIMITATION FOR SUBMERGED LANDS AND UPLANDS GRANTED BY ACT OF CONGRESS (WITH PROTECTIONS OUTLINED ON PAGE 3)

Pros

Furtheres the goals of cooperative federalism -- the states would strongly support this position.  
Would permit the resolution of title to submerged lands and uplands granted by Act of Congress.

The limitations appear to protect vital federal interests.

Cons

Could result in numerous resource-intensive claims.

Could result in uncertainty over some federal land management activities.

The conditions and limitations which agencies believe are necessary will significantly enhance and complicate litigation over their scope.

OPTION II: SUPPORT WAIVER OF 12-YEAR LIMITATION FOR SUBMERGED LAND CLAIMS ONLY (WITH NEW NOTIFICATION LANGUAGE AND WITH SOME OF THE PROTECTIONS OUTLINED ON PAGE 3)

Pros

Furtheres the goals of cooperative federalism -- the states would strongly support this position.

The definition of notice will address concerns of state officials that federal claims be made clearly.

Would permit the resolution of title to submerged lands.

Would address major state concerns in a way which would result in less litigation than option 1.

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Cons

Could result in numerous resource-intensive claims.

Could result in uncertainty over some federal land management activities.

OPTION III: No action.

Pros

Would ensure stability of federal land management responsibilities, subject to the uncertainties which are inherent in the present law.

Would ensure state land claims could not be brought after the existing 12-year statute of limitations.

Would avoid exposure to an unknown number of lawsuits, some of which may be frivolous.

Cons

Would possibly impair states' ability to settle title to disputed land and mean continued division between some states and the federal government over quiet title claims.

Would encourage states to bring numerous and perhaps unnecessary lawsuits to protect their interests within the 12-year limitations period.

Would leave sovereign state concerns unaddressed.

- 9 -

OPTION III: No action.

Pros

Would ensure stability of federal land management responsibilities, subject to the uncertainties which are inherent in the present law.

Would ensure state land claims could not be brought after the existing 12-year statute of limitations.

Would avoid exposure to an unknown number of lawsuits, some of which may be frivolous.

Cons

Would possibly impair states' ability to settle title to disputed land and mean continued division between some states and the federal government over quiet title claims.

Would encourage states to bring numerous and perhaps unnecessary lawsuits to protect their interests within the 12-year limitations period.

Would leave sovereign state concerns unaddressed.

Option 1

§ 2409a. Real Property Quiet Title Actions

(a) Except as provided in subsection (b) of this section, the United States may be named as a party defendant in a civil action under this section to adjudicate a disputed present title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands or to Naval Petroleum Reserve Number 1 (Elk Hills), nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) No civil action may be initiated under this section by a plaintiff who has previously released, quitclaimed, conveyed, disclaimed, or otherwise relinquished title to the land in favor of the United States.

(c) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession, or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such title, possession, or control. Just compensation shall not include the value of improvements made by the United States to the real property.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

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(g)(1) Any civil action under this section, except for an action brought by a state, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew should have known of the claims of the United States.

(g)(2) Any civil action instituted under this section by a state with respect to any property used or required for defense purposes or on which the United States has made substantial improvements shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the state knew or should have known of the claims of the United States. This bar shall be effective so long as the land is being used by the United States.

(g)(3) An action may be brought by a state pursuant to this section more than twelve years after the time the cause of action accrued on the condition that, if successful in its claim of title, the state shall take title to the land subject to existing easements, leases, permits, or any rights granted or issued by the United States, and so far as possible under State law shall administer such rights in the stead of the United States and shall be entitled to any rents, royalties, or other payments thereafter made by the holders of such rights.

(g)(4) Any civil action instituted under this section by a state with respect to any land selections and grants for which there has been a final administrative decision by the Secretary of the Interior determining the lands ineligible for selection or grant or confirming title in the United States shall be barred unless it is commenced within twelve years of the date of the Secretarial decision. Such action shall be deemed to have accrued on the date the state knew or should have known of the claims of the United States.

(i) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

(j) Except as expressly provided herein, nothing in this section shall be construed as a waiver of any defenses of the United States.

(k) Nothing in this section shall be construed as conferring a right to, or authorizing payment of, compensation to any person for damages.

(l) Prior to initiating any action under subparagraph (a), a state shall apply to the agency official responsible for the real property for a determination regarding the United States' interest in real property to which title may be in dispute. With respect to real property in which the agency official

- 3 -

determines that the United States does not have an interest, the agency official shall issue a disclaimer of interest which shall be binding on the United States. The agency official shall have 180 days to make a determination pursuant to this subsection after submission by the state of information adequate to define with particularity the state's interest in the real property. If the agency official fails to make a determination within 180 days or determines the United States has an interest in the real property, the state may commence an action in district court to quiet title to the real property. Where more than one agency is responsible for the real property, the agencies must concur with each other before a disclaimer is issued.

Option 2

§ 2409a. Real Property Quiet Title Actions.

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession, or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such title, possession or control. Just compensation shall not include the value of improvements made by the United States to the real property.

(c) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(d) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(e) A civil action against the United States under this section shall be tried by the court without a jury.

(f) Any civil action under this section, except for an action brought by a state involving lands beneath navigable waters, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claims of the United States provided that notice for the purposes of the accrual of actions by states shall be by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the state on notice of the federal claim to the

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lands or by the open and notorious use, occupancy or improvement of the claimed lands.

(g) Any civil action instituted under this section by a state with respect to any lands beneath navigable waters which are used or required for defense purposes shall be barred unless the action is commenced within twelve years of the date upon which it accrued, provided that this bar shall be effective only so long as the land at issue is being used by the United States for national defense purposes.

(h) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

(i) Prior to initiating any action under subparagraph (a), a state shall apply to the agency official responsible for the real property for a determination regarding the United States' interest in real property to which title may be in dispute. With respect to real property in which the agency official determines that the United States does not have an interest, the agency official shall issue a disclaimer of interest which shall be binding on the United States. The agency official shall have 180 days to make a determination pursuant to this subsection after submission by the state of information adequate to define with particularity the state's interest in the real property. If the agency official fails to make a determination within 180 days or determines the United States has an interest in the real property, the state may commence an action in district court to quiet title to the real property.

THE WHITE HOUSE

WASHINGTON

July 29, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM:

RALPH C. BLEDSOE

Executive Secretary



SUBJECT:

Additional Materials for July 30, 1986 Meeting

Attached is a paper pertaining to drug abuse policy prepared by OMB with assistance from other agencies. The paper contains rough ideas for Council consideration on how the President's goals might be achieved. Please look these over and add others you feel should be included as part of the President's drug abuse program.

These and other proposals will be discussed at the Domestic Policy Council meeting scheduled for Wednesday, July 30, 1986 at 2:00 p.m. in the Roosevelt Room.

In developing your ideas, keep in mind the need to motivate constituencies, the importance of alternative funding arrangements and placing emphasis on private sector initiatives and support. We must move quickly to put in place the efforts needed to carry out the President's goals, including initiatives on legislation, funding, and communications.

This information has been collected by OMB working with agency personnel where possible. It is intended as a discussion document and as such, presents alternatives that an eventual omnibus proposal could include.

**GOAL NO. 1: DRUG-FREE WORKPLACES**

This goal would be to protect the public and the workforce, and to increase productivity by ensuring that workers in sensitive occupations are clear-minded and free of the effects of illegal drugs. Four major actions would be proposed:

**o Establish a drug-free Federal workplace.**

**Current Efforts**

Current government-wide policy requires agencies to provide short-term counseling, and treatment referral services.

**Alternative**

Horner recommendations.\* No cost data available from OPM.

**o Encourage states and local governments to develop drug-free workplaces.**

**Current Efforts**

Minimal

**Alternative**

WH IGA campaign.  
DOL promotional campaign.

**o Work with government contractors to ensure drug-free workplaces.**

**Current Efforts**

There are no government-wide efforts to work with federal contractors in this regard.

**Alternative**

The President/Administration could:

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\* These recommendations were handed out at the July 22 DPC meeting.

(1) Direct, through Executive Order, Presidential memoranda, or OFPP Policy Letter, that agencies encourage their contractors to use their "best efforts" to educate their employees in matters of drug abuse, and to screen, detect and treat those employees requiring such treatment.

FY 87 Amendment: 0 (can be accomplished with existing resources)  
FY 88 Request: 0

(2) Direct, through Executive Order, Presidential memoranda, or OFPP Policy Letter, that the Federal Acquisition Regulation be amended to require that contractors, as a condition of doing business with the federal government, certify that they have instituted a comprehensive, viable program for ensuring a drug-free environment in their facilities.

FY 87 Amendment: 0 (can be accomplished with existing resources. Contractor costs of establishing these programs would, however, be passed back to the government in the form of higher contract prices.)  
FY 88 Request: 0

(3) Using the Affirmative Action Program as a model, seek legislation to (a) require that contractors (at least those whose products have life threatening or national security characteristics) establish comprehensive drug detection, prevention, educational and treatment programs, and (b) establish a program in an

appropriate federal agency with sufficient personnel and funding resources to review and approve contractor drug programs, and once approved, to monitor contractor adherence to those programs.

FY 87 Amendment: 0  
FY 88 Request: \$5 M (To fund start-up costs in the appropriate federal agency for implementing the approval and surveillance aspects of the program.)

**o Encourage private sector companies to pursue drug-free workplaces.**

**Current Efforts**

Minimal

**Alternative**

(1) Emphasize employer/union responsibility for prevention of drug-abuse in the workplace in speeches of Secretary Brock and other DOL officials.

(2) Develop letter from Secretary Brock to be sent out to governments, company and union officials using various interest group mailing lists.

(3) Have DOL's Bureau of Labor-Management Relations and Cooperative programs develop state/regional conferences on cooperative worker-management drug control programs, involving public and private employer and employee representatives. Working in conjunction with HHS, provide technical assistance on testing and treatment.

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**These activities would be accomplished  
within existing resources.**

**GOAL NO. 2: DRUG-FREE SCHOOLS**

This goal would be to have every educational institution drug-free, from grade schools through universities. Four major steps would be explored.

- o Seek to assure that all schools establish a policy of being drug free.

**Current Efforts**

Speeches by Secretary Bennett calling on college presidents to notify students and parents that schools will be drug free this fall.

**Alternative**

Booklets distributed by Secretary Bennett to postsecondary, secondary, and elementary school officials encouraging schools to declare goal of becoming drug free.

1987 Amendment:

0 (can be accomplished within existing resources)

1988 Request: 0

- o Inform heads of all educational institutions about the Federal law on distributing drugs in or near schools.

**Current Efforts**

Rely on existing information networks to make local officials aware of law.

**Alternative**

Joint letter from Attorney General and Education Secretary to heads of public and private school systems informing them of federal law and penalties regarding distributing drugs on or within 1,000 feet of private or public elementary or secondary schools.

Promotional campaign with brochures and publicity as part of new ED program as discussed below.

1987 Amendment: 0  
(can be accomplished within existing resources)  
1988 Request: 0

o Develop ways to communicate accurate and credible information on how to achieve a drug-free school.

o Encourage drug abuse problems to be taught as part of a health curriculum.

Current Efforts

Through its Alcohol and Drug Abuse Education Program ED supports five regional centers that provide intensive training to teams of school personnel (700 per year) on how to train local personnel in combatting drugs in schools. Over 600 schools are affected each year. Over 33,800 individuals have been trained over the last 12 years.

ED will also be publishing a booklet on drug-free schools in the near future.

1986 Actual: \$3 million  
1987 Budget: \$3 million

Alternative

Propose legislation for a new \$100M ED program, program: 20 percent to be reserved for national level activities, to include ED's ongoing activities and new efforts such as development and diffusion of model programs and distribution of pamphlets. Remainder allocated to states and localities for drug abuse prevention activities, including development and purchase of new health textbooks dealing with drug abuse.

1987 Amendment: \$97 million  
1988 Request: \$100 million

**GOAL NO. 3: EXPAND DRUG TREATMENT**

The health dangers posed by drug use are more evident than at any time in recent history, and we need to make appropriate treatment available to those experiencing health damage and addiction. Community-based efforts in three major areas would be considered.

Over the last ten years, a wide variety of approaches to the treatment and prevention of illicit drug use have been implemented across the nation. While many of these programs have been successful in reducing drug abuse in their "target" populations, they have rarely had a significant, lasting impact on overall drug use in a community as a whole. It has become increasingly clear that only integrated, community-wide attack on illicit drug use including prevention, intervention, and treatment activities combining the resources of private, public and voluntary organizations in the community can be effective. Using this approach will create a climate of intolerance to drug use, which alone can bring about a lasting reduction in illicit drug abuse.

**o Encourage states to develop and implement programs that treat specific drug-related health problems.**

**Current Efforts**

States are not permitted to use Alcohol, Drug Abuse, and Mental Health Block Grant funds for in-patient treatment of drug abusers. Out-patient treatment is permitted, but no data are available, given the nature of the block grant reporting guidelines.

**Alternative**

Establish an Office for Technical Assistance for Drug Abuse Prevention (TADAP) within the Office of the HHS Secretary. Upon Request of States, TADAP would provide model referral/treatment criteria.

Within the context of a consolidated grant for a SWAT-team like approach to address high drug abuse areas, include a sub-program to assist states in improving or developing treatment referral programs.

While ADAMHA has the facilities to develop a model treatment research center, no intramural research on the treatment of cocaine or heroin dependence is currently being conducted. Extramurally, most treatment research is concentrated on the evaluation of established narcotic treatment techniques, with relatively little research being conducted on the treatment of cocaine or the treatment of narcotic users in conjunction with AIDS risks reduction.

1986 Actual: \$6.6 million  
1987 Request: \$8.4 million

The National Institute on Drug Abuse (NIDA) conducts research into new and innovative drug abuse treatment techniques.

1986 Actual: \$8 million  
1987 Budget: \$9 million

Expansion of the ARC inpatient treatment research program to conduct research on opiate and cocaine detoxification. Further expansion of extramural research to cocaine and alternatives, to methadone maintenance in the treatment of opiate users. (approximately 20 grants)

1987 Amendment: \$14 million  
1988 Budget: \$23.4 million

Expand research into new and innovative drug abuse treatment techniques, including greater emphasis on less-expensive, outpatient modalities. Increase the number of patients in research protocols.

1987 Amendment: \$4 million  
1988 Request: \$13 million

**o Accelerate research in health-related areas, including drug testing.**

Current Efforts

Alternative

Conduct pilot studies in 50 laboratories to develop standardized procedures for monitoring

quality control for drug urine testing. Develop a plan to either encourage non-federal organizations to administer the certification process or to establish user fees if certification is conducted by a federal agency.

1987 Amendment: \$1 million  
1988 Budget: Privatize or user fee

ADAMHA is currently supporting analytical methods developments for the detection of illicit drugs and their metabolites in body fluids. Current efforts are focused on the analysis of blood and urine samples.

1986 Actual: \$0.9 million  
1987 Request: \$1 million

Expand all current efforts to develop sensitive and reliable assays for illicit drugs and their metabolites. Initiate research to investigate and develop alternative assay techniques, such as assays of saliva, which are more likely to be acceptable by society.

1987 Amendment: \$2 million  
1988 Budget: \$3.1 million

o Stimulate development of innovative prevention programs.

Current Efforts

ADAMHA sponsors research to determine the efficacy of family-based prevention programming targeted at secondary school populations, programs organized at the work site, and other community level interventions. Prevention research also involves the evaluation of early intervention efforts targeted to pre-adolescent populations located in the school and in community agencies.

1986 Actual: \$2.4 million

Alternative

NIDA will organize a comprehensive program of evaluation of prevention interventions emphasizing the school, the family and the work sites as points of contact, and the pre-adolescent, adolescent, and young adult as the focus of concern. The efforts will involve the evaluation both of efforts to prevent the initiation of drug use and early intervention strategies designed to identify and serve the incipient drug user and his or her family.

1987 Amendment: \$4 million

1987 Request: \$2.5 million

ADAMHA is currently supporting five programs looking at early indicators of mental health problems as well as a limited number of investigations of the influences of the family on illicit drug use and possible genetic bases for illicit drug use.

1986 Actual: \$3.1 million  
1987 Request: \$3.3 million

o Support integrated, community-wide demonstration grants to assist communities mobilize their efforts to fight illicit drug use and to determine the efficacy of integrated, community-wide programs.

Current Efforts

Integrated, community-wide illicit drug use prevention, intervention, treatment programs have never been attempted.

1988 Budget: \$6.8 million

Supplement currently funded NIMH grantees to support research on how parents, teachers, and the community can combine to avert the development of drug alcohol problems in high risk children. Expand current extramural research on biological and behavioral bases of illicit drug use with special emphasis on investigations of why some individuals appear "invulnerable" to illicit drug use.

1987 Amendment: \$1.5 million  
1988 Budget: \$5 million

Alternative

Support 30 community-wide demonstrations.

1987 Amendment: \$60 million  
1988 Budget: \$45 million

**GOAL NO. 4: EXPAND INTERNATIONAL COOPERATION**

The goal would be to obtain cooperation from every country with which the United States must work in drug enforcement and treatment programs.

The Department of State's International Narcotics Matters Bureau is responsible for the international narcotics control program. The major elements of this program are country programs for crop eradication, drug interdiction, training of foreign personnel for narcotics enforcement, and drug prevention and education. The INM Bureau also contributes to international organizations devoted to suppressing the production, trafficking and abuse of narcotics in major narcotics-producing countries. Over half of the funds provided for the international narcotics program in 1986 (\$60.1 million) were devoted to eradication programs, INM's highest priority. Colombia, Mexico, Burma, and Peru have the largest eradication programs.

Under this program several actions could be taken:

o Recall for consultation U.S. Ambassadors in selected countries that produce illegal drugs or that have national drug problems, and support their anti-narcotics activities.

Inasmuch as INM's program focuses on major narcotics-producing countries, this action would require major increases in the programs activities.

<u>Current Efforts</u> (\$ in millions)	<u>Alternative</u> (\$ in millions)
Eradication 37.4	56.1
Interdiction 11.4	17.1
Education & Training 11.3	17.0
Total 60.1	90.2

o Continue to expand appropriate use of Defense resources to support drug interdiction and destruction of illegal refineries.

Current Efforts (\$ in millions)

40

Alternative (\$ in millions)

60

**o Intensify efforts with other nations to stop drug trafficking and money laundering.**

Efforts under this heading could be directed to smaller producing countries and/or non-producing countries.

Current Efforts (\$ in millions)

8.5

Alternative (\$ in millions)

12.75

**GOAL NO. 5: STRENGTHEN LAW ENFORCEMENT**

Strong and visible drug enforcement is needed to cause disruptions in drug trafficking and in trafficking routes. Law enforcement is also needed to create an environment in which health-related programs can advance. Building on the existing drug enforcement effort, the following actions would be emphasized:

- o Expand sharing of knowledge and prestige of law enforcement personnel with those involved in drug prevention programs, particularly with young people.**

**Current Efforts**

FBI and DEA coaches Program \$1 M

No drug prevention training program currently provided for state/local officers at FLETC.

**Alternative**

+\$3M

Begin Treasury Department (FLETC) training program for street officers +\$150K.

- o Provide prompt and strong punishment by the entire criminal justice system for drug dealers operating close to users.**

**Current Efforts**

Federal efforts are aimed primarily at high-level distributors.

30% of Federal prisoners are drug offenders, few are low level traffickers. Housing them costs \$155 M.

Purchase DEA investigation equipment \$7M.

**Alternative**

Seek mandatory sentencing for all drug distributors.

Increase drug offenders population by 50% (consisting of low level traffickers) requires +\$39 M for housing, +\$120 M for construction.

Purchase \$7M more equipment.\*\*

Justice grants aimed at drug problems \$16M.      Direct all Justice grant money in 1987 budget to drugs +\$3M.

Encourage states to use unobligated grant funds for drug programs +\$116M.

**\*\* Items included in June 18, 1986 Policy Board letter to Congress**

**o Direct Law Enforcement Coordinating Committees and U.S. Attorneys to prosecute violators of statutes against selling illegal drugs in or near school property.**

**Current Efforts**

Legal Divisions and U.S. Attorney efforts directed at drug prosecutions \$96M

U.S. Marshall support provided for increased prisoner movement and security \$37M

**Alternative**

+\$6M to double the efforts of attorneys for OCDE task forces and narcotics prosecutions\*\*

+\$3M for additional prisoner movements and security\*

**o Expedite development of a comprehensive Southwest border initiative to stop illegal drug entry into the U.S.**

**Current Efforts**

Existing DEA intelligence center \$10M

Intelligence Community programs \$12M

**Alternative**

Install a new All-Source Intelligence Center +\$15M \*\*

Intelligence Community programs +\$12M \*\*

**\* Items included in President's 1987 Budget.**

**\*\* Items included in June 18, 1986 Policy Board letter to Congress.**

DEA foreign program 320 positions and \$38M	+40 more DEA foreign agents + \$4M **
No existing FBI computer program	Advanced FBI computer program for interdiction +\$9M *
Customs Service high altitude radar balloon funded for SW border (not yet in use).	+5 high altitude balloons along SW border +\$19M/yr. **
Customs Service currently uses FAA and Air Force radar for tracking smugglers. \$3M/yr.	Enhanced Customs Service C31 Center along SW border +\$7M. **
Customs Service currently uses 4 surveillance (P-3A) aircraft \$14M/yr.	Replace with 4 newer longrange surveillance (E2C) aircraft. \$14M/yr - **

\* Items included in President's 1987 Budget.

\*\* Items included in June 18, 1986 Policy Board letter to Congress.

**GOAL NO. 6: EXPAND PUBLIC AWARENESS AND PREVENTION**

Continued leadership by the President and Mrs. Reagan is vitally needed to achieve more gains in the fight against illegal drugs. Attitudes have changed, awareness has increased, and many people are ready to join in the fight. The President's ongoing efforts would be supported through the following actions.

- o Ask all citizens to join in Mrs. Reagan's drug abuse awareness and prevention campaign.

**Current Efforts**

ADAMHA supports communities' efforts to form "Just Say No" antidrug abuse clubs to increase parental and school professionals' awareness about the signs of drug abuse, and available treatment/intervention approaches.

**Alternative**

Continue within existing resources

- o Redouble efforts in all media forms, to stop illegal drugs and to make their use unacceptable in our society.

**Current Efforts**

Working closely with the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the American Association of Advertising Agencies ('4As') is about to embark on a \$500 million media campaign against drug abuse. In addition, ADAMHA has an on-going effort to develop media materials, such as the "Just Say No" campaign, and has just begun a new cocaine campaign -- COCAINE: THE BIG LIE.

**Alternative**

Continue within existing resources

- o Disseminate accurate and credible information about the health dangers of drug abuse.

Current Efforts

The Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) has an on-going program of information preparation and dissemination. In 1985, the National Clearinghouse for Drug Abuse information answered over 83,000 requests for information and distributed over 3 million publications relating to the "Just Say No" campaign.

1986 Actual: \$5 million  
1987 Request: \$5 million

Alternative

Continue within existing resources